



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of C C Auto, Inc.

Case No. TR-13-0001

FINAL DECISION

On February 9, 2012, Ronald Chamberlin filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of C C Auto, Inc. Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in the Eau Claire Leader-Telegram, a newspaper published in Eau Claire, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by March 18, 2013. No additional claims were filed. The Administrative Law Judge issued a Preliminary Determination in this matter on May 7, 2013. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d) the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Ronald Chamberlain
3435 Fairfax Street, Apt. 1
Eau Claire, WI 54701

Charles Christensen
CC Auto, Inc.
8063 North Road
Eau Claire, WI 54701

Nicholas Christensen
CC Auto, Inc.
4144 Meadow Lane
Eau Claire, WI 54701

Pekin Insurance Company
Bond Department
2505 Court Street
Pekin, IL 61558

FINDINGS OF FACT

1. C C Auto, Inc. (the Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 3624 Mall Drive, Eau Claire, Wisconsin. The dealership is out of business.
2. The Dealer had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) from March 15, 2010, until it was cancelled effective March 11, 2012. (Bond #B170585 from Pekin Insurance Company)
3. On August 11, 2011, Ronald Chamberlin (Chamberlin) purchased a 2004 Chevy Tahoe, vehicle identification number 16NEK13ZX41326881, from the Dealer. On August 19, 2011, Chamberlin executed a contract to purchase an extended warranty covering the vehicle. The term of the extended warranty was 24 months or 50,000 miles. The extended warranty purchased by Chamberlin was administered by DriverZEdge, a company with headquarters in Henderson, Nevada. Chamberlin purchased the extended warranty policy through the Dealer. It cost \$1,199.00.
4. Chamberlin did pay to the Dealer the \$1,199.00 premium for the extended warranty. Early in 2012, Chamberlin attempted to file a claim on the extended warranty. Chamberlin telephoned the warranty company and was informed that checks sent by the Dealer to pay the premium for the extended warranty had not cleared the bank. Accordingly, the extended warranty policy had never been issued.
5. On August 13, 2012, Chamberlin filed a complaint against the Dealer with the Department. The investigator assigned to the complaint attempted to contact owners of the dealership but was unsuccessful. The dealership was already closed. On February 9, 2012, Chamberlin filed a claim against the surety bond of the Dealer in the amount of \$1,199.00.
6. The Dealer's retention of the premium Chamberlin paid for the extended warranty to DriverZEdge constitutes violations of Wis. Stat. § 218.0116(1)(c) (willfully defrauding a retail buyer) and Wis. Stat. § 218.0116(1)(cm) (willful failure to perform any written agreement with any retail buyer). The loss sustained by Ronald Chamberlin was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license.

7. Ronald Chamberlin submitted documentation to support a bond claim of \$1,199.00, the amount he paid for the warranty. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Pekin Insurance Company was in effect and is, therefore, a timely claim.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. *[recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)].*

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(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim filed against the security bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. With respect to the claim described above, the Dealer violated Wis. Stat. §§ 218.0116(1)(c) and 218.0116(1)(cm). Wis. Stat. §§ 218.0116(1)(c) and 218.0116(1)(cm) are both identified in Wis. Admin. Code § Trans 140.21(1)(c)1. The claimant sustained a loss as a result of these violations.

CONCLUSIONS OF LAW

1. The claim of Ronald Chamberlin arose on August 19, 2011, the date he purchased an extended warranty through the Dealer and the Dealer failed to submit the premium paid by Ronald Chamberlin to DriverZEdge. The surety bond issued to the Dealer by Pekin Insurance Company covers a one-year period commencing on March 15, 2011. The claim arose during the period covered by the surety bond.

2. Ronald Chamberlin filed a claim against the motor vehicle dealer bond of the Dealer on February 9, 2012. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. Ronald Chamberlin sustained a loss as the result of an act of the Dealer that would be grounds for suspension or revocation of the Dealer's motor vehicle dealer license. Ronald Chamberlin has submitted documentation to support a claim in the amount of \$1,199.00.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Ronald Chamberlin Baker against the motor vehicle dealer bond of C C Auto, Inc., is APPROVED in the amount of \$1,199.00. Pekin Insurance Company shall pay Ronald Chamberlin this amount for his loss attributable to the actions of the Dealer.

Dated at Madison, Wisconsin on June 12, 2013.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
MARK F. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.